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CHARLIE SHEEN and 9TH STEP PRODUCTIONS,
INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

KEITH FITZGERALD, an individual,

Plaintiff,

v

CHARLES "CHARLIE" SHEEN,
an individual, 9TH STEP
PRODUCTIONS, INC., a California
corporation, and DOES 1 through
10.

Defendants.

Case No.: 2:15-cv-02779-DMG-MRW

[Assigned to the Hon. Dolly M. Gee,
Courtroom 7]

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Complaint Filed: April 15, 2015

Trial Date: None Set

1 I. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
 4 proprietary, or private information for which special protection from public disclosure
 5 and from use for any purpose other than prosecuting this litigation may be warranted.
 6 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
 7 Stipulated Protective Order. The parties acknowledge that this Order does not confer
 8 blanket protections on all disclosures or responses to discovery and that the protection
 9 it affords from public disclosure and use extends only to the limited information or
 10 items that are entitled to confidential treatment under the applicable legal principles. The
 11 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
 12 Protective Order does not entitle them to file confidential information under seal; Local
 13 Rule 79-5 as well as this Court's Civil Minutes titled "Pilot Project re Sealed Documents"
 14 and paragraph 18 of the Honorable Dolly M. Gee's Procedures and Schedules set forth
 15 the procedures that must be followed and the standards that will be applied when a party
 16 seeks permission from this Court to file material under seal.

17 1.2 GOOD CAUSE STATEMENT

18 The parties stipulate through counsel that entry of this Protective Order is
 19 necessary and appropriate to comply with the Parties' Confidentiality Agreement,
 20 facilitate discovery and avoid unneeded discovery motions. The parties further stipulate
 21 through counsel that the public disclosure of any deposition testimony taken in this
 22 proceeding should be prohibited. The grounds for this Stipulated Protective Order are
 23 that discovery in this action involves disclosure of (i) medical and/or other
 24 private/personal information of Plaintiff or Sheen and/or other relevant parties; and (ii)
 25 trade secret, proprietary, confidential or sensitive business information of 9th Step and
 26 Sheen.

27 This Protective Order is needed to ensure compliance with the Parties'
 28 Confidentiality Agreement as well as to ensure fair and efficient completion of discovery

1 while protecting the Parties' rights in such private and confidential personal, medical and
2 business information and minimizing judicial intervention in the discovery process. The
3 Parties, through their counsel, agree to the Protective Order. Until such time as the Court
4 approves the Protective Order, the parties agree to abide by the terms of the Protective
5 Order as if they were in full force and effect.

6

7 2. DEFINITIONS

8 2.1 Action: this pending federal law suit.

9 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it
12 is generated, stored or maintained) or tangible things that qualify for protection under
13 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
14 Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
16 support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

19 2.6 Disclosure or Discovery Material: all items or information, regardless of the
20 medium or manner in which it is generated, stored, or maintained (including, among
21 other things, testimony, transcripts, and tangible things), that are produced or generated
22 in disclosures or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
25 expert witness or as a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this Action.
27 House Counsel does not include Outside Counsel of Record or any other outside
28 counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
4 this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm which has
6 appeared on behalf of that party, and includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
15 their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is designated
17 as "CONFIDENTIAL."

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20
21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected
23 Material (as defined above), but also (1) any information copied or extracted from
24 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
25 Material; and (3) any testimony, conversations, or presentations by Parties or their
26 Counsel that might reveal Protected Material.

27 Any use of Protected Material at trial shall be governed by the orders of the trial
28 judge. This Order does not govern the use of Protected Material at trial.

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
 3 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
 4 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
 5 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
 6 and (2) final judgment herein after the completion and exhaustion of all appeals,
 7 rehearings, remands, trials, or reviews of this Action, including the time limits for filing
 8 any motions or applications for extension of time pursuant to applicable law.

9

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection under this
 13 Order must take care to limit any such designation to specific material that qualifies
 14 under the appropriate standards. The Designating Party must designate for protection
 15 only those parts of material, documents, items, or oral or written communications that
 16 qualify so that other portions of the material, documents, items, or communications for
 17 which protection is not warranted are not swept unjustifiably within the ambit of this
 18 Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 20 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
 21 to unnecessarily encumber the case development process or to impose unnecessary
 22 expenses and burdens on other parties) may expose the Designating Party to sanctions.

23 If it comes to a Designating Party's attention that information or items that it
 24 designated for protection do not qualify for protection, that Designating Party must
 25 promptly notify all other Parties that it is withdrawing the inapplicable designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 27 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or

1 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
2 must be clearly so designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
6 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
7 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
8 portion or portions of the material on a page qualifies for protection, the Producing Party
9 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
10 in the margins).

11 A Party or Non-Party that makes original documents available for inspection need
12 not designate them for protection until after the inspecting Party has indicated which
13 documents it would like copied and produced. During the inspection and before the
14 designation, all of the material made available for inspection shall be deemed
15 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
16 copied and produced, the Producing Party must determine which documents, or portions
17 thereof, qualify for protection under this Order. Then, before producing the specified
18 documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page
19 that contains Protected Material. If only a portion or portions of the material on a page
20 qualifies for protection, the Producing Party also must clearly identify the protected
21 portion(s) (e.g., by making appropriate markings in the margins).

22 (b) for testimony given in depositions that the Designating Party identify the
23 Disclosure or Discovery Material on the record, before the close of the deposition all
24 protected testimony.

25 (c) for information produced in some form other than documentary and for any
26 other tangible items, that the Producing Party affix in a prominent place on the exterior
27 of the container or containers in which the information is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
2 the Producing Party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the Designating
5 Party’s right to secure protection under this Order for such material. Upon timely
6 correction of a designation, the Receiving Party must make reasonable efforts to assure
7 that the material is treated in accordance with the provisions of this Order.

8

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time that is consistent with the Court’s Scheduling
12 Order.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
14 process (and, if necessary, file a discovery motion) under Local Rule 37.1 et seq.

15 6.3 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
17 to harass or impose unnecessary expenses and burdens on other parties) may expose the
18 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
19 the confidentiality designation, all parties shall continue to afford the material in question
20 the level of protection to which it is entitled under the Producing Party’s designation
21 until the Court rules on the challenge.

22

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this Action
26 only for prosecuting, defending, or attempting to settle this Action. Such Protected
27 Material may be disclosed only to the categories of persons and under the conditions

1 described in this Order. When the Action has been terminated, a Receiving Party must
 2 comply with the provisions of section 13 below.

3 Protected Material must be stored and maintained by a Receiving Party at a
 4 location and in a secure manner that ensures that access is limited to the persons
 5 authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
 7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
 8 may disclose any information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
 10 employees of said Outside Counsel of Record to whom it is reasonably necessary to
 11 disclose the information for this Action;

12 (b) the officers, directors, and employees (including House Counsel) of the
 13 Receiving Party to whom disclosure is reasonably necessary for this Action;

14 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
 15 is reasonably necessary for this Action and who have signed the “Acknowledgment and
 16 Agreement to Be Bound” (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters and their staff;

19 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
 20 to whom disclosure is reasonably necessary for this Action and who have signed the
 21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (g) the author or recipient of a document containing the information or a
 23 custodian or other person who otherwise possessed or knew the information;

24 (h) during their depositions, witnesses, and attorneys for witnesses, in the
 25 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
 26 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not
 27 be permitted to keep any confidential information unless they sign the
 28 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed

1 by the Designating Party or ordered by the court. Pages of transcribed deposition
2 testimony or exhibits to depositions that reveal Protected Material may be separately
3 bound by the court reporter and may not be disclosed to anyone except as permitted
4 under this Stipulated Protective Order; and

5 (i) any mediator or settlement officer, and their supporting personnel, mutually
6 agreed upon by any of the parties engaged in settlement discussions.

7

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
9 IN OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation that
11 compels disclosure of any information or items designated in this Action as
12 "CONFIDENTIAL," that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification shall
14 include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to
16 issue in the other litigation that some or all of the material covered by the subpoena or
17 order is subject to this Protective Order. Such notification shall include a copy of this
18 Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by
20 the Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with the
22 subpoena or court order shall not produce any information designated in this action as
23 "CONFIDENTIAL" before a determination by the court from which the subpoena or
24 order issued, unless the Party has obtained the Designating Party's permission. The
25 Designating Party shall bear the burden and expense of seeking protection in that court of
26 its confidential material and nothing in these provisions should be construed as
27 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
28 from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.

Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

1 10. USE OF PROTECTED MATERIAL IN COURT

2 (a) A party that files Protected Material with the Court, and who seeks to have
3 the record containing such information sealed, shall submit to the Court a motion or an
4 application to seal, pursuant to Local Rule 79-5.

5 (b) A Receiving Party that files Protected Material with the Court, and who does
6 not seek to have the record containing such information sealed, shall, at least ten (10)
7 business days prior to the filing of or use of the Confidential Information, give notice to
8 all other parties, and to any non-party that designated the materials as Confidential
9 Information pursuant to this Order, of the submitting party's intention to file or use the
10 Confidential Information, including specific identification of the Confidential
11 Information. Any affected party or non-party may then file a motion to seal, pursuant to
12 Local Rule 79-5.

13 11. DISCLOSURE OF DEPOSITION TESTIMONY

14 Regardless of whether deposition testimony is designated as "Confidential," the
15 deposition transcripts, video and audio recordings (if any), created in connection with any
16 deposition taken in this action, shall not be disclosed, disseminated or otherwise released
17 directly or indirectly to the media, including, without limitation, to any of the following:
18 news outlets, journalists, media organizations, newspapers, periodicals, magazines,
19 publishers, publications, televisions stations, radio stations, tabloids, Internet service
20 providers, databases, blogs, Internet social networks, podcasts, internet publications,
21 and/or any other person or enterprise involved in the print, wire, Internet or electronic
22 media.

23 ///

1 Notwithstanding anything to the contrary set forth herein, this Order expressly
2 prohibits the public disclosure of any and all deposition testimony, in any format (e.g.,
3 written transcript, videotape, audio tape, digital recording, etc.) unless and until such
4 testimony has been introduced into evidence at trial. See *Seattle Times Co. v. Rhinehart*
5 (1984) 46 U.S. 20, 33, 104 S.Ct. 2199, 2207-2208 (“(P)retrial depositions and
6 interrogatories are not public components of a civil trial.... Much of the information that
7 surfaces during pretrial discovery may be unrelated, or only tangentially related, to the
8 underlying cause of action. Therefore, restraints placed on discovered, but not yet
9 admitted, information are not a restriction on a traditionally public source of
10 information.”).

12. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
14 Protected Material to any person or in any circumstance not authorized under this
15 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
16 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
17 all unauthorized copies of the Protected Material, (c) inform the person or persons to
18 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
19 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
20 that is attached hereto as Exhibit A.

21
22
23
24. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
25 **PROTECTED MATERIAL**

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection, the
28

1 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
2 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
3 established in an e-discovery order that provides for production without prior privilege
4 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach
5 an agreement on the effect of disclosure of a communication or information covered by
6 the attorney-client privilege or work product protection, the parties may incorporate their
7 agreement in the stipulated protective order submitted to the court.

8

9 14. MISCELLANEOUS

10 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 14.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
16 to use in evidence of any of the material covered by this Protective Order.

17 14.3 Filing Protected Material. A Party that seeks to file under seal any Protected
18 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
19 under seal pursuant to a court order authorizing the sealing of the specific Protected
20 Material at issue. If a Party's request to file Protected Material under seal is denied by the
21 court, then the Receiving Party may file the information in the public record unless
22 otherwise instructed by the court.

23

24 15. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 4, within 60 days
26 of a written request by the Designating Party, each Receiving Party must return all
27 Protected Material to the Producing Party or destroy such material. As used in this
28 subdivision, "all Protected Material" includes all copies, abstracts, compilations,

summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4.

16. Any willful violation of this Order may be punished by civil or criminal contempt proceedings, financial or evidentiary sanctions, reference to disciplinary authorities, or other appropriate action at the discretion of the Court.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: October 2, 2015

ELIOT RUSHOVICH
AANAND MEHTANI
JANA M. MOSER
RUSHOVICH MEHTANI LLP

By:



JANA M. MOSER
Attorneys for Plaintiff
KEITH FITZGERALD

1 Dated: October 2, 2015

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
MICHAEL D. HOLTZ
ALLISON S. HART

5 By:



6 ALLISON S. HART

7 Attorneys for Defendants
CHARLIE SHEEN and 9th STEP
8 PRODUCTIONS, INC.

9

10

11

12 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

13

14 DATED: 10/5/2015



15 HON. MICHAEL R. WILNER
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, [full name], of [address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of Keith Gerald vs. Charles "Charlie" Sheen and 9th Step Productions, Inc., Case No. 2:15-cv-09-DMG-MRW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply will expose me to sanctions and punishment in the nature of contempt. I solemnly swear that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [full name] of _____ [full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where signed:

Printed name: _____

Signature: